In the High Court of Punjab and Haryana at Chandigarh.

Civil Writ Petition No.326 of 1999.

Date of decision:19.12.2007.

Chandan Singh.

...Petitioner.

Versus

State of Haryana and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice K. C. Puri.

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Present: Mr.Narender Hooda Advocate for the petitioner.

Ms. Kirti Singh, AAG Haryana for r espondent No.1.

None for respondent Nos. 2 and 3.

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K. C. Puri, J.

In this Civil Writ Petition, the petitioner has prayed for issuance of a writ in the nature of Certiorari for quashing the impugned award, Annexure P2 with a further prayer to direct respondent No.3 to reinstate the petitioner with full back wages and continuity of service.

It is pleaded by the petitioner that he was employed by respondent No.3 on the post of Peon on work charge basis. He continued to work as such till 31.12.1989 and on the said date, a post of Peon had fallen vacant on the retirement of Jai Kishan,Peon. The petitioner continued to work on the said post till 4.9.1991 on which date his services were

terminated without issuing any show cause notice and without complying with the mandatory provisions of the Act.

It is further pleaded by the petitioner that he had raised industrial dispute against the termination of his services. The Government referred the dispute under Section 10(1)(c) of the Industrial Disputes Act,1947 (in short the Act) to the Industrial Tribunal-cum-Labour Court, Rohtak. The respondent No.3 filed written statement . The Labour Court, vide order dated 7.1.1998, Annexure P2 dismissed the claim petition on the ground that the case of the petitioner was covered under Section 2(oo)(bb) of the Act and, thus, there was no necessity to issue notice before terminating the services of the petitioner or to pay retrenchment compensation.

The petitioner challenges the award of Labour Court in this Civil Writ Petition on the ground that his case does not fall under Section 2 (oo)(bb) of the Act as his services have neither been terminated due to non renewal of contract and that the Labour Court failed to appreciate that the action of respondent No.3 in appointing the petitioner for three months and without break, is clearly illegal, violative of principles of natural justice and tantamount to unfair labour practice.

The stand of respondent Municipal Committee before the Labour Court was that the petitioner was appointed against a leave vacancy in stop gap arrangement till the arrival of regular employee. The services of the petitioner were automatically dispensed with on 4.9.1991 on arrival of new regular employee. There was no need to serve any notice and charge sheet etc. because the appointment of the petitioner was against a leave

vacancy purely on temporary basis. The petitioner had not completed 240 days of his service continuously.

The learned counsel for the petitioner has argued that the case of the petitioner does not fall within the ambit of Section 2 (oo)(bb) of the Act as the said provision applies only in case there is an employment contract and that has not been renewed or the services have been terminated in terms of the employment contract. Both the eventualities have not occurred in the present case as there was no renewal contract. The petitioner was appointed for three months vide letter dated 18.7.1991. According to this letter, his term was to expire on 17.10.1991, but, his services were terminated on 4.9.1991 i.e. during the subsistence of the contract. The stand taken by the respondent Municipal Committee that the new incumbent has joined the service and on that count the services of the petitioner have been terminated is without any basis as the new incumbent has been transferred and no regular employment has been made.

I have carefully considered the said submissions but do not find any force in the same. Admittedly, the petitioner was working on ad hoc basis for three months and regular employee has joined in his place. The regular employee can be appointed by way of direct recruitment or by way of transfer. Mere fact that the new incumbent has joined by way of transfer does not lead to the conclusion that he is not a regular employee. For all intents and purposes, he is a regular employee of the respondents. So, the argument advanced by the counsel for the petitioner to the effect that provisions of Section 2(oo)(bb) of the Act are not attracted is without any legal force. The term of employment of the petitioner was for three months

on ad hoc basis. The service contract of the petitioner was renewable at the option of the respondents. The respondents have been getting sanction of the competent authority for the appointment of the petitioner. Once regular employee has joined the duties, after that the petitioner has no legal right to remain in service. The case of the petitioner is fully covered by the provisions of Section 2(oo)(bb) of the Act and as such the award of the learned Labour Court does not call for any interference.

In view of the above discussion, there is no merit in this writ petition and the same is dismissed.

December 19 ,2007. (K. C. Puri)
Jaggi Judge